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Vanita Gupta

April 9, 2019



OPPOSE THE CONFIRMATION OF BRANTLEY STARR TO THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in opposition to the confirmation of Brantley Starr for the U.S. District Court for the Northern District of Texas.

As a top legal advisor since 2015 to far-right Texas Attorney General Ken Paxton, Mr. Starr, 39, has worked to restrict voting rights, LGBTQ equality, immigrant rights, and reproductive freedom. Over the past two years, President Trump and the Texas senators have consistently selected extreme ideologues like Mr. Starr, Jeffrey Mateer, and Matthew Kacsmayk to serve as federal judges in Texas. These individuals simply lack the independence and fair-mindedness that are necessary for such lifetime positions. I urge the Senate to reject Mr. Starr's nomination.

Defended Voting Rights Restrictions: Mr. Starr has been a central figure in the state's reprehensible efforts to suppress voting rights and restrict access to the ballot box. In a February 5, 2018 letter, Mr. Starr encouraged the Texas Legislature to consider passing a variety of voter suppression measures, including: (1) requiring state agencies to "proactively identify noncitizens on Texas voter rolls," (2) increasing penalties for misstatements on voter registration applications, (3) promoting voter purges, (4) demanding more restrictive photo ID laws for absentee voting, and (5) curtailing voter assistance programs.¹ These proposals were designed to restrict the franchise, in the name of combating the phantom threat of voter fraud. Just weeks ago, a federal judge in Texas halted a disturbing effort to purge 100,000 voters from the voter rolls who Texas inaccurately claimed were noncitizens. The judge stated that "the road to a solution was inherently paved with flawed results, meaning perfectly legal naturalized Americans were burdened with what the Court finds to be ham-handed and threatening correspondence from the state."²

Mr. Starr defended Texas's discriminatory photo ID law in the case *Abbott v. Veasey*. The Fifth Circuit, sitting en banc, ruled that the law was passed with discriminatory effect in violation of Section 2 of the Voting Rights Act, and found that there was sufficient evidence to support a finding that the law was passed with discriminatory intent, but sent the issue

¹ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Brantley-Starr-1.pdf>.

² <https://www.nytimes.com/2019/02/28/us/texas-voter-rolls.html>.

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back to the trial court for further fact-finding. Mr. Starr worked on a petition for a writ of certiorari and asked the Supreme Court to overturn the Fifth Circuit. In his brief, Mr. Starr perpetuated the voter fraud myth, stating that the Texas law “was enacted to prevent voting fraud and to preserve voter confidence in the integrity of elections.”³ The Supreme Court denied Mr. Starr’s petition. Subsequently, the district court found that Texas had passed the law with discriminatory intent, a claim that was ultimately dismissed, but only after Texas passed a new law that the Fifth Circuit found cured the discriminatory problems of the previous one.

In addition, Mr. Starr defended Texas’s discriminatory voting rights practices in *Abbott v. Perez*, a challenge to Texas’s redistricting plans that discriminated against Latino and Black voters. After a federal district court held that Texas had created racial gerrymanders and intentionally diluted Latino and Black voting strength in violation of the Constitution and Voting Rights Act, Mr. Starr worked on briefs asking the Supreme Court to overturn the decision.⁴ In June 2018, five Justices of the Supreme Court largely reversed the lower court decision but held that Texas had created an unconstitutional racial gerrymander.

Attacked LGBTQ Equality: Mr. Starr sought to restrict the rights of transgender people in *Texas v. United States*, a lawsuit Texas filed against the Obama administration for its guidance that directed public school districts to allow transgender students to use restrooms that corresponded with their gender identity. Mr. Starr argued that the guidance was an encroachment on states’ rights, and, resorting to fearmongering, asserted that “the concerns we’ve always heard are related to safety.”⁵ In a June 2016 Attorney General opinion, Mr. Starr undertook a skewed legal analysis and concluded that the Fort Worth, Texas school district violated state law in adopting a policy to implement the Obama administration’s guidance permitting transgender students to use the bathroom of their gender identity.⁶ Mr. Starr sought to give states like Texas a license to discriminate against transgender students.

In an October 2015 panel discussion entitled “Gay Rights, States’ Rights,” Mr. Starr defended the right of county clerks to refuse to issue marriage licenses to same-sex couples. He stated: “If a clerk has a religious objection personally, state law currently allows them to delegate those duties to issue marriage licenses to others in their offices.... There is a new constitutional right after *Obergefell*, but we can’t, in the rush to recognize that, gloss over the other rights that have always existed under the First Amendment, under the Religious Freedom Restoration Acts at the federal and state level, under employment law at the federal and state level.”⁷ He made similar points in a June 2015 memo he wrote in the wake of the *Obergefell* decision, referring with apparent skepticism to “[t]his newly minted federal constitutional right to same-sex marriage.”⁸

³ <https://www.scotusblog.com/wp-content/uploads/2016/10/16-393-cert-petition.pdf>.

⁴ <https://www.judiciary.senate.gov/imo/media/doc/Brantley%20Starr%20SJQ%20-%20PUBLIC.pdf>.

⁵ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Brantley-Starr-2.pdf>.

⁶ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Brantley-Starr-3.pdf>.

⁷ <https://www.texastribune.org/2015/10/30/2015-tribune-festival-audio-justice-track/>.

⁸ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Brantley-Starr-4.pdf>.

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In addition, Mr. Starr supported the judicial nomination of Jeffrey Mateer, who was nominated in 2017 for a different Texas judicial vacancy but who was withdrawn in the wake of public outcry over his deeply troubling record, including a comment that transgender children were part of “Satan’s plan.” After Mr. Mateer was nominated, Mr. Starr issued a statement supporting the nominee and opining that “Jeff Mateer leaves a legacy of service to the State of Texas and will now extend that service to all Americans.”⁹

Sought to Undermine Immigrant Rights: Mr. Starr has defended anti-immigrant policies in four high-profile matters. In a 2018 law review article in the right-wing *Texas Review of Law & Politics*, Mr. Starr defended the Trump administration’s discriminatory Muslim ban, which was upheld last year in a controversial 5-4 decision of the Supreme Court. Mr. Starr asserted that the ban was constitutional because “this was a facially neutral order. The order did not discriminate. It did not say that Muslims cannot come into the country because they are Muslim.”¹⁰ Mr. Starr dismissed the conclusion (reached by many federal judges) that President Trump had acted with animus in creating the Muslim ban, declaring that “courts should not lightly psychoanalyze the drafter’s heart.”¹¹

Mr. Starr also attacked the constitutionality of the Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”) program, which was challenged in court by Mr. Starr’s office. Mr. Starr wrote that DAPA was “simply an inversion of the law that is irreconcilable with the Take Care Clause and is a transgression against the separation of powers. Any preschool viewer of Schoolhouse Rock could recite that it is Congress, not the President, who changes the law.”¹²

Mr. Starr was also involved in Texas’s litigation, *Texas v. United States*, challenging the legality of the Deferred Action for Childhood Arrivals (“DACA”) program to protect the status of Dreamers. Mr. Starr listed this case on his Senate questionnaire as his most significant litigated matter.

And in a case that Mr. Starr listed as his second most significant litigated matter, *City of El Centro v. Texas*, he defended Texas’s law prohibiting so-called sanctuary cities, which protect undocumented immigrants from being targeted and racially profiled. Mr. Starr would bring a clear anti-immigrant bias to the bench if confirmed as a judge.

Hostile to Reproductive Health Care: Mr. Starr has defended alarming efforts to restrict women’s access to reproductive health care. In 2017, he testified in support of Texas House Bill 35, which would have required fetal remains to be cremated or interred and given a funeral after a miscarriage or abortion. Mr. Starr criticized a federal court decision that had invalidated a rule adopted by a state agency that would have required burial of fetal remains, stating: “The court concluded incorrectly that [the undue burden] standard applies to a law like this, which is not a medical law or a health law, it’s a dignity or respect of life law.”¹³ Mr. Starr has also defended a restrictive anti-choice Texas law – which is being

⁹ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Brantley-Starr-5.pdf>.

¹⁰ Brantley Starr, “Executive Power over Immigration,” 22 Tex. Rev. L. & Pol. 283, 285 (2018).

¹¹ *Id.*

¹² *Id.* at 295.

¹³ <https://www.courthousenews.com/texans-say-fetal-burial-bill-doesnt-go-far-enough/>.

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challenged in court – that bans the safest and most common method of ending second-trimester pregnancies. In a court filing, Mr. Starr wrote: “The prohibition of this brutal, gruesome, and inhumane procedure promotes respect for the dignity of the life of the unborn.”¹⁴ In addition, Mr. Starr has defended Texas in its efforts to defund Planned Parenthood by terminating its Medicaid agreements, which allow Planned Parenthood to provide cancer screenings and other critical health care services to thousands of women throughout the state.¹⁵ Finally, Mr. Starr helped bring a lawsuit challenging a federal regulation under the Affordable Care Act that prohibited health care entities receiving federal funds from discriminating against patients or employees because they seek reproductive care or are transgender.¹⁶

Ideological Affiliations: Mr. Starr has been a member of the Federalist Society for nearly 15 years, and he serves on the Federalist Society’s Austin Lawyers Chapter Board of Advisors. This out-of-the-mainstream legal organization represents a sliver of America’s legal profession – just four percent – yet more than 80 percent of President Trump’s circuit court nominees and nearly 50 percent of his district court nominees have been Federalist Society members. Never before has a president attempted to pack the courts with such a high percentage of ideological extremists. Mr. Starr is also on the board of directors and serves as steering committee chair of the right-wing *Texas Review of Law & Politics*, which publishes articles that peddle far-right theories on such issues as affirmative action, church/state separation, immigrant rights, and health care. Mr. Starr’s right-wing ideology is so fervent that on his Senate questionnaire he listed his involvement with the Federalist Society and *Texas Review of Law & Politics* as examples of how he has met the legal profession’s ethical obligation to devote some time to “serving the disadvantaged.” If confirmed, Mr. Starr would bring a clear bias and far-right ideological agenda to the bench, and he would not serve as an objective and fair-minded arbiter.

Lack of ABA Rating: Mr. Starr, who was nominated less than a month ago, is being given a hearing before the ABA has had a chance to finish its evaluation of him, which will seriously compromise the ability of senators to properly vet his suitability for a federal judgeship. Like his predecessor Chuck Grassley, Senate Judiciary Committee Chairman Lindsey Graham has demonstrated sheer hypocrisy in ignoring the ABA rating process when he schedules nomination hearings, but touting ABA ratings when they are favorable to Trump nominees. They have defied the Senate tradition of not scheduling hearings until ABA ratings are completed, in a rush to pack the courts with President Trump’s extreme nominees.

Disturbing Lack of Diversity: President Trump’s lack of commitment to diversity on the federal judiciary is deeply disturbing. Mr. Starr, like the vast majority of the president’s judicial nominees, is a young, white male. President Trump has appointed the least diverse group of nominees in decades.¹⁷ Of his 44 appellate nominations, none are African-American. None are Latino. Only nine are women. His district court nominees are also predominately white and male. Our nation’s great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the guardian of

¹⁴ https://www.prochoiceamerica.org/wp-content/uploads/2019/04/Brantley-Starr_NARAL.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ <https://www.usatoday.com/story/news/politics/2018/02/13/trumps-87-picks-federal-judges-92-white-just-one-black-and-one-hispanic-nominee/333088002/>.

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our rights and liberties. At a time when the legal profession has more women and attorneys of color than ever before, President Trump's record on judicial diversity is truly appalling.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Brantley Starr for the U.S. District Court for the Northern District of Texas. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, at (202) 466-3311.

Sincerely,

A handwritten signature in dark ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Vanita Gupta
President & CEO